In the High Court for the States of Punjab and Haryana, at Chandigarh.

R.S.A.No.3584 of 2007 (O&M)
Decided on Nov 15,2007.

Prem Chand -- Appellant

vs.

Smt.Nirmala Devi and others -- Respondents.

Present: Mr. Ranjit Saini, Advocate, for the appellant

Permod Kohli,J: (Oral)

This is defendant's Second appeal against concurrent findings of fact recorded by the Courts below.

Briefly stated the facts as emerge from the record are that a residential house bearing No. 5L/139 NIT Faridabad, was allotted to Sant Ram Bhatia son of Sh. Tej Ram Bhatia by the Ministry of Rehabilitation, Government of India. Sant Ram Bhatia died on April 23,1980, leaving behind his widow Tara Bai, and two sons, namely Atam Parkash and Prem Chand. Tara Bai also died in the year 1992, without making any Will. Atam Parkash one of the sons also died on September 18,1995 and the plaintiffs in the suit are legal heirs/representatives of Atam Parkash. They filed a suit for partition seeking ½ share in the house in question.

Admittedly, they are owners in possession of the portion of the said house shown in green colour and marked with letters EFGBCD in the site plan and the defendant is owner of other portion of the house and is in possession of the portion shown red in the site plan and marked with letters AGFE.

The defendant denied the right and claim of the plaintiffs and stated that they are only licensees of the defendant and the defendant is the exclusive owner of the entire house.

The trial Court on the basis of the pleadings of the parties framed as many as eight issues and the main issues being Issue Nos. 1 and 2 read as under:-

1. Whether the plaintiffs are the co-sharers to the owner to the extent of ½ share in the suit property ? OPP
2. Whether the suit property is liable to be partitioned ? OPP

While deciding Issue Nos. 1 and 2, the trial Court held that the plaintiffs are the legal heirs of Atam Parkash , real brother of the defendant and both the brothers were entitled to the property in equal shares and thus, the plaintiffs are owners in possession of ½ share in the property. Accordingly, a preliminary decree for partition came to be passed by the trial Court vide its judgment and decree dated February 12,2007.

Aggrieved of the aforesaid judgment and decree, the defendant preferred an appeal before the learned Additional District Judge, Faridabad, but remained unsuccessful. The learned Appellate Court vide its judgment and decree dated August 27,2007, dismissed the appeal affirming the

findings of fact recorded by the trial Court on all issues. The appellant/defendant has now come up in this Second Appeal before this Cour against those findings of fact.

Both the Courts below have recorded findings of fact on the basis of the evidence/ material on record. Learned counsel appearing for the appellant/defendant has not been able to show any substantial question of law involved in the present appeal. There being concurrent findings of fact, no interference is warranted.

Hence, this Regular Second Appeal is hereby dismissed in limine.

Nov.15,2007 (Permod Kohli)
RR Judge